

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





# 77-1383

To be argued by  
JONATHAN J. SILBERMANN

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

-----X  
UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

ARTHUR McAVOY,

Defendant-Appellant.  
-----X

Docket No. 77-1383

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APPENDIX FOR APPELLANT'S BRIEF

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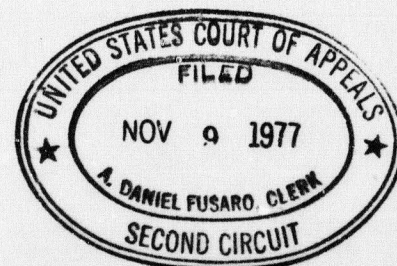
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ON APPEAL FROM A JUDGMENT  
OF THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

MARTIN ERDMANN, ESQ.,  
THE LEGAL AID SOCIETY  
Attorney for Appellant  
ARTHUR McAVOY  
FEDERAL DEFENDER SERVICES UNIT  
509 United States Courthouse  
Foley Square  
New York, New York 10007  
(212) 732-2971

JONATHAN J. SILBERMANN,

Of Counsel.





PAGINATION AS IN ORIGINAL COPY



75 621.437

**TITLE OF CASE**

THE UNITED STATES

**ATTORNEYS**

**For U. S.:**

U.S.

1. ARTHUR McAVOY-1-6  
2. PETER QUINN-1-6  
3. GILBERTO SCHMIDT-1

For Defendant:

Arthur Hammer (G. Schmidt)  
9 E. 40th St., NYC Tel. MU 5 8878

| 01) STATISTICAL RECORD                    | COSTS      | DATE | NAME OR RECEIPT NO. | REC. | DISB. |
|-------------------------------------------|------------|------|---------------------|------|-------|
| J.S. 2 mailed                             | Clerk      |      |                     |      |       |
| J.S. 3 mailed 2, 3                        | Marshal    |      |                     |      |       |
| Violation                                 | Docket fee |      |                     |      |       |
| Title                                     |            |      |                     |      |       |
| Sec.                                      |            |      |                     |      |       |
| 2113(a), (d)                              |            |      |                     |      |       |
| bery of insured bank by force & violence. |            |      |                     |      |       |
| (Six Counts)                              |            |      |                     |      |       |

| DATE  | PROCEEDINGS                                                                                                                                                                                                                                                                                                  |
|-------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2-75  | Filed indictment. (Superseding 75 Cr 214 and referred to Lasker, J.)                                                                                                                                                                                                                                         |
| 16-75 | PETER QUINN= Bail for QUINN of \$25,000. cash or surety bond reduced to \$25,000. Personal Recognizance Bond signed by Deft QUINN, his Mother and Sister or Brother-In-Law and secured by \$500. (Five Hundred) dollars cash. QUINN to sign in at Marshal's office S.D.N.Y. every day but Sunday--LASKER, J. |
| 19-75 | PETER QUINN= Filed Appearance Bond in the sum of \$25,000. secured by \$500. Name of Surety: Rosemary McKenna - Receipt # 51830 --CLERK.                                                                                                                                                                     |
| 27-75 | PETER QUINN= Remand issued 5-19-75.                                                                                                                                                                                                                                                                          |
| 13-75 | Filed Affdvt by Govt for W/H/C Ad Testificandum of one Michael Jimison that he be produce at SD of NY on 6-24-75 at 10Am....Writ Issued. ...ret. 6-24-75.                                                                                                                                                    |
| 23-75 | Filed Govt's Memo. in support of the use of Bank Surveillance photos.                                                                                                                                                                                                                                        |
| 23-75 | ARTHUR McVOY-Govt's memo. on the admission of evidence of a prior bank                                                                                                                                                                                                                                       |



## D. C. 116 Rev. Civil Docket Continuation

| DATE     | PROCEEDINGS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|----------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 6-26-75  | Filed Writ of Habeas Corpus for Michael Linton with marshal's return. Writ returned unexecuted at request of AUSA J. Epstein.                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| 8-14-75  | PETER QUINN= Sentence adj'd to 9-3-75 @ 9:15AM Room 618.---LASKER,J.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 8-29-75  | PETER QUINN= Filed Affdvt of Jeremy G. Epstein, AUSA, in support of a Writ. Writ issued - Ret. 9-3-75.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 9-3-75   | ARTHUR McAVOY= Filed MEMO ENDORSEMENT on Deft's Notice of Motion to correct an illegal sent. motion for a new trial filed 6-27-75. On the basis of information set forth in the answering affdvt of the U.S. Atty, the annexed motion is DENIED SO ORDERED--LASKER,J. (Pro-Se to mail notice)                                                                                                                                                                                                                                                                                            |
| 9-3-75   | PETER QUINN= Filed Judgment and Commitment Order - The Deft is hereby committed to the custody of the Atty General for imprisonment for a period of -Maxium per authorized by law, that is TWENTY-FIVE (25) YEARS, and for a study as described in Title 18, U.S.C.A., Section 4208(c). The results of such study to be furnished this Court within THREE (3) MONTHS whereuppn the Deft shall be returned to this Court and the sentence of imprisonment here imposed shall be subject to modification in accordance with Title 18, U.S.C.A., Section 4208(b). (COUNTS 5 & 6)--LASKER,J. |
| 9-3-75   | DEFT PETER QUINN pre-Sentence: "Bail exonerated"--LASKER,J.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 9-8-75   | GILBERTO SCHMIDT= Entered and filed NOLLE PROSEQUI-GRANTED--LASKER,J.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| 9-11-75  | ARTHUR THOMAS McAVOY= Mailed original CAJ copy #1 to the A.O., Wash, D.C. for payment.---LASKER,J. (Entered on 75 CR 214)                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 9-11-75  | ARTHUR THOMAS McAVOY= Filed CJA appointment of counsel, Edward S. Panzer, 299 E. N.Y.C. 10007 ---LASKER,J. (Filed in 75 CR 214)                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 9-19-75  | PETER QUINN= Filed commitment & entered return, Deft delivered to Warden, on 9-12-75, to U.S. Prison, Lewisberg, Pa.                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 9-19-75  | PETER QUINN= Filed Writ of E/C Ad Prosequendum for 9-3-75--Writ Allowed..Owen,J... Writ Satisfied...Lasker,J.                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| 11-24-75 | PETER QUINN= Filed Govt's. affidavit for a writ of habeas corpus directed to Warden, Federal Penitentiary, Lewisburg, Pa. Writ Issued, ret. 12-3-75.                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 12-3-75  | PETER QUINN= Filed JUDGMENT & COMMITMENT (atty present) The deft. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIVE (5) YEARS on both counts 5 and 6. & Sentences are to run concurrently with each other and not consecutively. Counts 1,2,3 and 4 are dismissed with the consent of the Govt. on the motion of deft's. counsel. ....Lasker,J.<br>Issued commitment 12-4-75.                                                                                                                            |
| 12-15-75 | PETE QUINN - Filed CJA 20 Copy 5 Appointment David Blackston ,401 Buay, NYC 10011 for Deft. dtd. 6-3-75 Lasker J.                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| 12-15-75 | PETE QUINN - Filed CJA 20 Copy 2 approving petition to David Blackston dtd. 6/3/75 Lasker J. (mailed copy 1 of CJA 20 to ADM. OFFICE)                                                                                                                                                                                                                                                                                                                                                                                                                                                    |



- 12-19-75 Filed Transcript of proceedings dtd. 6-24,25,26,27, 1975.
- 2-19-75 PETER QUINN - Filed True Copy of Judgment & Commitment with marshals return  
Deft. delivered to Warden M CC NYC on 12-3-75.
- 2-10-76 ARTHUR T. MCAVOY - Filed Affirmation & Notice of Motion for an order granting  
relief by vacating judgment & for a new trial. Ret. 2-13-76.
- 2-17-76 ARTHUR MCAVOY - Filed Gov'ts. Memorandum in opposition to defts. motion for  
a new trial.
- 2-17-76 ARTHUR MCAVOY - Filed Gov'ts. Affidavit in opposition to defts. motion for a  
new trial.
- 03-05-76 PETER QUINN - Filed true copy of J & C with Marshal's return - Dft. delivered  
on 11-17-72 to Warden, MCC - NYC.
- 03-17-76 ARTHUR T. MCAVOY - Filed Form 20 Copy 2 - Approving payment to Dr. Stanley L.  
Portnow. dtd. 3/3/76.....Lasker J.
- 03-17-76 ARTHUR T. MCAVOY - Filed Form 20 Copy 5 - Appointing Psychiatric Evaluation  
for Competency to Stand Trial & Mental responsibility by Dr. Stanley L.  
Portnow - 823 Park Avenue, NYC 10021
- 04-14-76 ARTHUR MCAVOY - Filed Order that Dr. A.L. Abrams M.D psychiatrist examine dft.  
as indicated & on or about 4/16/76 interview dft. & prepare report of his  
findings & conclusion as soon as possible, etc. Lasker J. (mailed notice)
- 5-20-76 GILBERTO SCHMIDT - Filed the following papers rec'd from Mag. Hartenstine (Mag#75-345)  
Docket Entry Sheet  
Criminal Complaint  
Warrant of Arrest - Unexecuted  
Financial Affdvt.  
Mag. Temp. Warrant of Arrest - Unexecuted  
Appearance Bond - PRB in the Amt. \$5,000.00 Unsecured  
CJA Form 20 Copy 5 - Appointing Arthur Hammer, 9 E. 40th St., NYC  
Tel. MU 5 8778.
- 12-1-76 PETER QUINN - Filed Opinion #15422. petition for reduction of sentence is granted as indicated.  
Each of the counts shall remain in suspended judgment until further order of the court.
- 12-1-76 PETER QUINN - Filed AMENDED Judgment & Commitment ( ) The  
Dft. is hereby committed to the custody of the Atty. Gen. or his authorized  
representative for imprisonment for a period of FOUR (4) YEARS on both counts  
5 & 6. Sentence to run concurrently with each other not consecutively.....  
.....Lasker J.  
Issued Commitment 12-8-76.
- 1-3-76 ARTHUR MCAVOY - Filed Notice of Appearance by Francis E. Dora, 32 Court St., Bklyn,  
NY Tel UL 5 6500.
- 12-22-76 PETER QUINN - Filed True Copy of J&C with marshals ret. Executed by forwarding  
copy of J & C to Warden, Ashland Kentucky on 12/8/76.

D



UNITED STATES DISTRICT COURT  
CRIMINAL DOCKET

U. S. vs

McAVOY, ARTHUR  
QUINN, PETER  
SCHMIDT, GILBERTO

Lasker, J.

75

437

Yr.

Docket No.

Def.

| DATE    | PROCEEDINGS (continued)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | V. EXCLUDABLE DELAY |     |     |     |
|---------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|-----|-----|-----|
|         | (Document No.)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | (a)                 | (b) | (c) | (d) |
| 7-12-77 | Filed Notice of Appeal, USCA , 2nd Circuit on deft.<br>Arthur McAvoy <i>m/c</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                     |     |     |     |
| -7-1-77 | Filed Judgment and Probation/ Commitment, atty. (Guy Heimemann) <i>only taken the copy</i><br>present. The defendant is hereby committed to the custody<br>of the Attorney General or his authorized representative for<br>imprisonment for a period of: Five (5) Years on Counts 1 and<br>2 and Imposition of sentence of imprisonment is suspended on<br>Counts 5 and 6 and the defendant is placed on Probation for<br>a period of Five (5) Years to commence upon the expiration of<br>term of imprisonment.<br>Counts 3 and 4 are dismissed on the motion of the defendants<br>counsel with the consent of the Government.....Lasker, J.<br>Issued Commitment 7-13-77. |                     |     |     |     |
| 7-20-77 | FLO COMMITMENT & MARSHAL'S RETURN - McAVOY                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                     |     |     |     |

A TRUE COPY  
RAYMOND E. BURGHARDT, Clerk



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

75 CRIM. 437

UNITED STATES OF AMERICA :

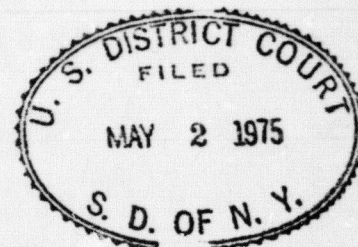
- v - :

ARTHUR McAVOY, PETER QUINN,  
and GILBERTO SCHMIDT, :

Defendants. :

INDICTMENT

S. 75 Cr.



The Grand Jury charges:

On or about the 24th day of January, 1975, in the Southern District of New York, ARTHUR McAVOY, PETER QUINN, and GILBERTO SCHMIDT, the defendants, unlawfully, wilfully and knowingly did, by force and violence and by intimidation, take from the person and presence of another property and money in the approximate amount of \$4,814.15 belonging to, and in the care, custody, control, management and possession of the People's Bank for Savings, 110 Chatsworth Avenue, Larchmont, New York, a bank the deposits of which were then insured by the Federal Deposit Insurance Corporation.

(Title 18, United States Code, Sections 2113(a) and 2.)

SECOND COUNT

The Grand Jury further charges:

On or about the 24th day of January, 1975, in the Southern District of New York, ARTHUR McAVOY and PETER QUINN, the defendants, unlawfully, wilfully and knowingly did assault and put in jeopardy the lives of various persons by the use of a dangerous weapon, to wit, a firearm, while



committing the offenses described in the First Count of this indictment.

(Title 18, United States Code, Section 2113(d) and 2.)

THIRD COUNT

The Grand Jury further charges:

On or about the 24th day of February, 1975, in the Southern District of New York, ARTHUR McAVOY and PETER QUINN, the defendants, unlawfully, wilfully and knowingly did, by force and violence and by intimidation, take from the person and presence of another property and money in the approximate amount of \$20,802.00 belonging to, and in the care, custody, control, management and possession of the Barclays Bank of New York, 491 Main Street, New Rochelle, New York, a bank the deposits of which were then insured by the Federal Deposit Insurance Corporation.

(Title 18, United States Code, Sections 2113(a) and 2.)

FOURTH COUNT

The Grand Jury further charges:

On or about the 24th day of February, 1975, in the Southern District of New York, ARTHUR McAVOY and PETER QUINN, the defendants, unlawfully, wilfully and knowingly did assault and put in jeopardy the lives of various persons by the use of a dangerous weapon, to wit, a firearm, while committing the offenses described in the Third Count of this indictment.

(Title 18, United States Code, Sections 2113(d) and 2.)



FIFTH COUNT

The Grand Jury further charges:

On or about the 14th day of March, 1975, in the Southern District of New York, ARTHUR McAVOY and PETER QUINN, the defendants, unlawfully, wilfully and knowingly did, by force and violence and by intimidation, take from the person and presence of another property and money in the approximate amount of \$9,305.00 belonging to, and in the care, custody, control, management and possession of the Chase Manhattan Bank, 45 Quaker Ridge Road, New Rochelle, New York, a bank the deposits of which were then insured by the Federal Deposit Insurance Corporation.

(Title 18, United States Code, Section 2113(a) and 2.)

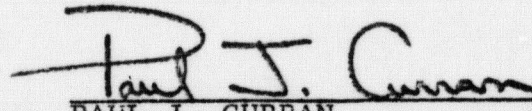
SIXTH COUNT

The Grand Jury further charges:

On or about the 14th day of March, 1975, in the Southern District of New York, ARTHUR McAVOY and PETER QUINN, the defendants, unlawfully, wilfully and knowingly did assault and put in jeopardy the lives of various persons by the use of a dangerous weapon, to wit, a firearm, while committing the offenses described in the Fifth Count of this indictment.

(Title 18, United States Code, Sections 2113(d) and 2.)

  
FOREMAN

  
PAUL J. CURRAN

United States Attorney



## United States District Court

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

ARTHUR McAVOY, PETER QUINN  
and GILBERTO SCHMIDT,

Defendants.

## INDICTMENT

S. 75 Cr.

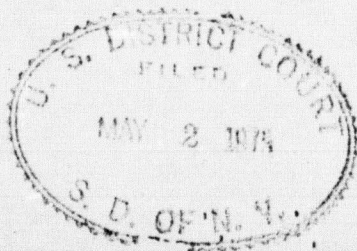
(In violation of Title 18,  
United States Code, Sections  
2113(a), 2113(d) and 2.)

A TRUE BILL

United States Attorney.

Foreman.

FPI-SS-1-13-70-20M-4923



75 Cr 437

for Quinn  
May 16, 1975. Bail of 25,000 cash a purely  
bond reduced to 25,000 personal recognizance  
bond signed by defendant Quinn, his mother &  
sister or brother in law & secured by \$500<sup>00</sup>/<sub>100</sub>  
(five hundred) dollars cash. Quinn to sign in  
at Marshall's office 5 PM every day but Sundays.  
MORRIS L. COOK USDT

Wm

June 24, 1975 - Dept - Peter Quinn present  
Dept. Arthur McAvoy - present - (Atty. David Blackstone)  
Atty. Edward Panger present -  
Trial Begun - (Jury selected)

June 25 - Trial Continued -  
Dept "Peter Quinn" present - Atty David Blackstone  
Atty. - withdraws plea of Not Guilty and  
now pleads Guilty to Counts 5 and  
6 - P.S.T. released - Sentence set for  
July 28, 1975 at 10 am -  
Trial to continue w/ Dept. McAvoy. - Arthur Quinn



Aug 14, 1975 - Peter Quinn sentence adj to  
d Sept 3, 1975 at 9.15 AM Room 618  
Lasker J. WM

Sept 3, 1975. Dept Peter Quinn Pre.  
Atty David Blackstone Present -  
US Atty Jeremy Epstein Pre.

Maximum period authorized by law, that is TWENTY-FIVE (25) YEARS, and  
for a study as described in Title 18, U.S.C.A. §4208(c). The results  
of such study to be furnished this court within THREE (3) MONTHS  
whereupon the defendant shall be returned to this court and the  
sentence of imprisonment here imposed shall be subject to modification in  
accordance with Title 18, U.S.C.A §4208(b). (Counts 5 and 6)

Sept 3, 1975 - Dept Peter Quinn Pre.  
sent - "Bail Exonerated"  
Lasker J. WM  
Lasker J. WM

9-8-75 -GILBERTO SCHMIDT- Entered and filed NOLLE PROSEQUI-GRANTED-LASKER, J.



Dec 3, 1975 -

Deft Peter J. Dunn Present. Deft's Atty  
David Blackstone present.  
U.S. Atty J. Epstein Present. Deft sentenced  
to Five (5) years on Cts 5 + 6 to run  
concurrently + not consecutively  
with each other. - Cts 1 2 3 + 4 are  
dismissed with consent of the  
Govt. - on motion of deft's counsel  
Tucker J.

Dec. 1, 1976 - This Ct in its mem. dated  
12/1/76 grants the deft's application for  
a reduction of term + amend its  
judgment dated 12/1/76 solely to the  
extent indicated. - Four (4) years  
on both Cts 5 + 6. Sentence to run  
concurrently + not consecutively  
Tucker J.



July 1, 1977 - Ref. Arthur Mc Arty plea  
by Atty. Guy Hermanson -

FIVE (5) YEARS on Counts 1 and 2 and Imposition of sentence of imprisonment is suspended on Counts 5 and 6 and the defendant is placed on Probation for a period of FIVE (5) YEARS to commence upon the expiration of term of imprisonment.

Counts 3 and 4 are dismissed on the motion of the defendants counsel with the consent of the Government.

- Lasker J. EF



1 rkx 10

2 United States of America

3 v.

4 Arthur McAvoy

5 Peter Quinn

6 CHARGE OF THE COURT

7 (Lasker, J.)

8 THE COURT: Ladies and gentlemen, this has been  
9 a short trial and the testimony, although it has involved  
10 a lot of witnesses has been very well analyzed and described  
11 for you by the attorneys on both sides and my charge will  
12 not refer to the testimony or the facts to any extent.  
13 It will only deal with the rules of law governing you in  
14 reaching a verdict as to the charges against Mr. McAvoy.  
15 I wish I can just sit and talk to you as I am  
16 doing at the present time because that is the most effective  
17 way to get a point across but the law like everything else  
18 in life these days has gotten complicated and to be sure  
19 that our statements of law are correct, judges these days  
20 generally reduce their remarks to writing. I do also.  
21 I mention this first of all to explain why I will be reading  
22 to you, although I hope it will be as conversational as  
23 possible in tone and secondly, if I should read too fast  
24 or you don't understand me, raise your hand to let me know  
25 and I will slow down or explain.

Ladies and gentlemen, now that you have heard



1 rkh 11

2 testimony and the arguments of counsel, the time has  
3 come to instruct you as to the law in this case. You have  
4 been chosen and sworn as jurors in this matter to try the  
5 issues presented by the allegations of the indictment and  
6 on your determination of the facts, and I stress the word  
7 your determination, to decide under the law as I will  
8 instruct you whether the government has proven by any of  
9 the charges against Arthur McAvoy beyond a reasonable doubt.  
10 I will discuss the charges with you later in detail but  
11 before that I want to give you a few important general  
12 instructions.

13 First, you are to perform your duty as jurors  
14 without bias or prejudice to or for Mr. McAvoy or the  
15 government. The law does not permit jurors, and you would  
16 not want it to permit jurors to be governed by sympathy  
17 or swayed by prejudice or public opinion.

18 Second, we start with the proposition that we  
19 started with at the outset of the trial, that is, that the  
20 law presumes Mr. McAvoy to be innocent of every charge  
21 against him. You will recall when I selected you to serve  
22 on this jury, or when you were selected, I should say, I  
23 specifically asked each of you if you could enter on the  
24 discharge of your duties presuming Mr. McAvoy and at that time  
25 Mr. Quinn to be innocent unless proven guilty beyond a



1  
2 reasonable doubt after your own deliberations and each of  
3 you gave me the answer, yes. This presumption of innocence  
4 is alone sufficient to acquit Mr. McAvoy unless or until  
5 you as jurors have unanimously satisfied yourselves beyond  
6 a reasonable doubt of Mr. McAvoy's guilt on any of the  
7 charges that are pending.

8 Because a defendant is presumed innocent, he is  
9 under no obligation to testify in his own behalf. Many  
10 reasons exist why a defendant may choose not to testify.  
11 To give only one, he may feel he is not effective in public.  
12 In any event, Mr. McAvoy has chosen not to testify in this  
13 case and you are under instructions not to draw any inference  
14 against him for doing so since that is his right.

15 Now, the burden or responsibility is on the  
16 government to prove Mr. McAvoy guilty beyond a reasonable  
17 doubt of every essential element of every crime charged against  
18 him and I will of course advise you later in the charge  
19 just what elements there are to reach of the charges.

20 Third, the existence of the indictment, as I told  
21 you at the outset of the trial does not constitute evidence  
22 against Mr. McAvoy but is merely a method of bringing the  
23 charges against him.

24 I have said the government has the responsibility  
25 of proving Mr. McAvoy guilty beyond a reasonable doubt. Let me



1 rkhi3

2 define that important term for you at the outset. A  
3 reasonable doubt is not a vague, speculative doubt or  
4 an imaginary doubt. It is a doubt which, as the phrase  
5 indicates, is based on reason and which comes either from  
6 the evidence that has been put before you and has been  
7 heard and seen or from the lack of evidence that you have  
8 not heard or seen. It is a doubt which a reasonable man  
9 or woman might entertain. It is a doubt, and I think this  
10 is the best definition of it which would be exercised  
11 by a reasonable man or woman before he or she were ready  
12 to act in relation to their own affairs.

13 Let us say you have an important decision to  
14 make. How do you go about making that decision? You  
15 think about everything you know about it. You think about  
16 everything you would want to know and not to be told and  
17 you say to yourself, do I have enough information, do I have  
18 enough dependable, reliable information so I am ready to  
19 act. If you say I don't, then you have a reasonable doubt.  
20 If you say I do, then you do not have a reasonable doubt.

21 A mere suspicion will not justify conviction.  
22 Suspicion is no substitute for evidence, nor is it sufficient  
23 to convict the defendant if you find that the circumstances  
24 merely render his guilt probable. The law does not deal  
25 in probability. Since the burden or responsibility is on



1 rkhl4

2 the prosecution to prove Mr. McAvoy guilty beyond a reason-  
3 able doubt, he has the right to rely on the mere failure of  
4 the government to establish his guilt and need not as I  
5 have said earlier put on any evidence himself.

6 In saying that the government must prove its  
7 case beyond a reasonable doubt if there is to be a con-  
8 viction, I do not mean that the government is required to  
9 prove guilt beyond all possible doubt. Indeed, in human  
10 affairs, it is hard to think of anything that we can prove  
11 beyond all possible doubt with the exception of mathematical  
12 propositions, but the proof must be, as I have earlier  
13 said, of such a convincing character that you would be  
14 willing to rely and act on it in the most important decisions  
15 of your own affairs.

16 Let's talk ladies and gentlemen about the very  
17 important question of credibility of witnesses. I quite  
18 agree with counsel, who I think agree with each other,  
19 that the determination in this case depends upon your  
20 estimate of the credibility of the witnesses and therefore  
21 you should pay close attention to what I am about to discuss  
22 with you, because it has to do with the subject of how to  
23 determine the credibility of a witness.

24 The evidence in this case, as I have told you  
25 a number of times, consists of the testimony of witnesses,



1 rkh15

2 the exhibits which have been received in evidence and the  
3 facts which have been stipulated or agreed by counsel.  
4 You are obligated to decide the case solely on the basis  
5 of the evidence, but in your consideration of the evidence,  
6 you are not limited to the bald statements of a witness.  
7 You are entitled to and must think beyond the mere words  
8 that have been uttered. In deciding the many questions  
9 before you, it is your job to determine the credibility  
10 of a witness. How do you go about that? Perhaps the best  
11 answer to state that you determine the truthfulness or  
12 accuracy or weight to be given to a witness' testimony in  
13 the same way that you would determine the question in  
14 your own personal affairs. After all, we are all constantly  
15 called upon, if you think about it from day to day to deter-  
16 mine how much confidence we place in the statements that  
17 people make to us. The truthfulness or dependability of  
18 a witness as that as any other person we deal with can be  
19 determined by his demeanor, his look, his relationship  
20 to the case and the parties, the possibility of his being  
21 biased or partial or his not being biased or partial. The  
22 stake he may have in the outcome of the case, the reasonable-  
23 ness of his statements, the strength or weakness of his  
24 recollection and the extent to which what he has said has  
25 been either corroborated on the one hand or contradicted on



the other by the testimony of other witnesses or by exhibits or stipulations.

The witness or his testimony may be impeached by his own prior inconsistent statement unless there is some explanation of the inconsistency. In ordinary life when you need to determine the truthfulness of a person, you ask yourself, don't you, as you would here, how did he or she impress me, did his or her version appear straightforward and candid or did he or she appear to be trying to hide something. Did he or she have any motive to testify falsely or no motive of that kind? The ultimate question for you to decide in passing on the credibility of a witness is whether he or she told you the truth. It is for you and you jurors alone to determine the weight and credit to be given the testimony.

In making these suggestions, I am giving you guidelines. I am not attempting nor have I attempted to suggest how you should apply those guidelines. It is important for you to know that if you find that a witness has wilfully, that is, purposely testified falsely to any material that is important fact or matter, not some matter you believe to be unimportant, you may reject the entire testimony of the witness or you may accept such portion of it as you believe and reject the remainder.



1 rkx 17

2 Ladies and gentlemen, as I have said, your  
3 determination of a case must be based on the evidence.  
4 There are generally speaking, two types of categories of  
5 evidence from which you may properly find facts. I am  
6 sure you have heard them referred to often. One is called  
7 direct evidence. That is the evidence that is eye or ear  
8 testimony. You have heard it or seen it. The other is  
9 called indirect or circumstantial evidence.

10 Circumstantial evidence is defined as proof of  
11 events or circumstances which point to the existence or  
12 non-existence of facts as to which there was no eye witness  
13 or ear witness.

14 The law makes no distinction as to the weight  
15 of circumstantial evidence as distinct from direct evidence.  
16 It requires only that the jury find the facts in accordance  
17 with all the evidence in the case, both direct and circum-  
18 stantial beyond a reasonable doubt. An example by the  
19 way of the difference between direct and circumstantial  
20 evidence is the following. It is an example which is often  
21 given to juries but it is vivid, I think and worthwhile.

22 If you looked out the window and saw it was raining,  
23 that would of course be direct evidence that it was raining.  
24 On the other hand, if all those blinds were drawn and  
25 somebody came through the door over there with a dripping



1 umbrella, that would be pretty good circumstantial evidence  
2 that it was raining outside. You wouldn't have seen it with  
3 your own eyes but you would have the right to infer seeing  
4 a man come through the door with a dripping umbrella that it  
5 was raining outside. To be sure, he might have been  
6 standing under a shower in one of the rooms of this building  
7 that has a shower but that would be highly unlikely and  
8 the other inference, is the likely one.

9 Ladies and gentlemen, both the United States  
10 Attorney and Mr. Panzer have during the course of the trial  
11 objected to the introduction of evidence and addressed  
12 arguments to the bench, although very few. I want to tell  
13 you it is the duty of attorneys on each side of the case  
14 to make such objections when an attorney believes that the  
15 other side is proposing to put into evidence or ask questions  
16 about something that is not properly admissible and nothing  
17 I have said in ruling on any objection expresses any view  
18 of mine as to how this case should be decided.

19 Ladies and gentlemen, the indictment in this case  
20 contains four counts and reads as follows:

21 Count 1. On or about January 24, 1975, in the  
22 Southern District of New York, and I will advise you that  
23 both Larchmont, New York, and New Rochelle, New York, are  
24 in the Southern District of New York; Arthur McAvoy, Peter  
25



1 rkh19

2 Quinn and Gilberto Schmidt, the defendants, unlawfully,  
3 wilfully, knowingly did by force and violence and by in-  
4 timidation take from the person and presence of another  
5 property and money in the approximate amount of \$4,814.15  
6 belonging to and in the care, custody, control, management  
7 and possession of, the People's Bank for Savings, 110  
8 Chatsworth Avenue, Larchmont, New York, a bank, the  
9 deposits of which were then insured by the Federal Deposit  
10 Insurance Corporation.

11 Count 2 charges that on or about the 24th  
12 day of January, 1975, in the Southern District of New York,  
13 Arthur McAvoy and Peter Quinn, the defendants, unlawfully,  
14 wilfully and knowingly did assault and put in jeopardy  
15 the lives of various persons by the use of a dangerous  
16 weapon, to wit, a firearm, while committing the offenses  
17 described in the first count of this indictment.

18 I won't read you the third and fourth counts  
19 because they duplicate counts 1 and 2 in their form but  
20 count 3 states that on March 14, 1975, Arthur McAvoy  
21 and Peter Quinn robbed the Chase Manhattan Bank at 45  
22 Quaker Ridge Road, New Rochelle, of \$9,305 in the same  
23 language as count 1 and count 4 in the same language as  
24 count 2, charges Mr. McAvoy and Mr. Quinn with assaulting  
25 and putting in jeopardy the lives of various persons by the



1 rkh20

2 use of a dangerous weapon, to wit a firearm.

3 Incidentally, although count 3 specifies that  
4 Mr. McAvoy and Mr. Quinn took \$9,305, the testimony I  
5 believe is that they actually took \$7,200. You need  
6 not concern yourselves with the different in amount.

7 Very briefly, the crimes charged here are  
8 that in counts 1 and 3, they robbed a bank, that is, they  
9 used force, violence or intimidation to take money belonging  
10 to a bank.

11 Counts 2 and 4, that they assaulted or put in  
12 jeopardy the lives of persons by the use of a gun during  
13 the commission of the alleged robbery.

14 The indictment, of course, names three defendants  
15 in all. Only one, Mr. McAvoy is on trial before you. He  
16 is the only person whose guilt or innocence you should  
17 announce in your verdict, although as I will explain to  
18 you shortly in considering his guilt or innocence, you may  
19 have to determine the nature of the participation, if any,  
20 of others.

21 In the determination of innocence or guilt, you  
22 must bear in mind that guilt is personal. The guilt or  
23 innocence of Mr. McAvoy must be determined separately  
24 with respect to him solely on the evidence presented  
25 against him or the lack of evidence. The case of any



1 rkh21

2 defendant stands or falls upon the proof or lack of proof  
3 of the charge against him and not against somebody else.

4 Let me discuss with you the law relating to  
5 count 1 and count 3: Mr. McAvoy is charged in count 1  
6 and 3 with having violated Title 18, United States Code,  
7 Section 213A which provides in pertinent part, and this is  
8 the law passed by Congress: Whoever by force and violence  
9 or by intimidation takes or attempts to take from the person  
10 or presence of another any property or money or any things  
11 of value belonging to or in the care, custody, control,  
12 management or possession of any bank, is guilty of a crime.  
13 Section 2113F of the same law defines a bank as follows:  
14 "As used in this section, the term bank means any bank the  
15 deposits of which are insured by the Federal Deposit  
16 Insurance Corporation."

17 You will remember that it was stipulated by both  
18 sides that the banks in question here are banks whose  
19 deposits are insured by the Federal Deposit Insurance  
20 Corporation.

21 Now, in order to find Mr. McAvoy guilty on  
22 count 1 or count 3 -- well, count 1 first, you must find  
23 first that on or about January 24, 1975, the People's Bank  
24 for Savings located at 110 Chatsworth Avenue was a bank  
25 the deposits of which were insured by the Federal Deposit



1 rkh22

2 Insurance Corporation. As I say, there is no dispute  
3 about that.

4 Second, that on or about January 24, 1975,  
5 Mr. McAvoy took money from that bank -- took money, which  
6 was in the care, custody, control or possession of the  
7 bank or that he aided and abetted someone else to do so.

8 Third, that the money was taken from the person  
9 or presence of another.

10 Fourth, that Mr. McAvoy accomplished this taking  
11 by force and violence or by intimidation and fifth, that  
12 he wilfully did the acts charged.

13 The same five elements that I just read to you  
14 apply to count 3 except that you must find as to count 3  
15 on March 14, 1975, the Chase Manhattan Bank in New Rochelle  
16 was a bank the deposits of which were insured by the  
17 Federal Deposit Insurance Corporation, and there is no  
18 dispute about that, that on or about March 14, 1975, Mr.  
19 McAvoy took from the Chase Manhattan Bank funds which were  
20 in its control or aided and abetted someone else to do so;  
21 that he took money from the person or presence of another;  
22 that he did so by force and violence or by intimidation  
23 and that he did so wilfully.

24 Now, the first three of these elements seem  
25 simple enough and I don't think they require any elaboration.



1 rkh23

2 As to the fourth which is that the taking of money must  
3 have been accomplished by force or violence or intimidation,  
4 a few more words may be useful. With respect to the fourth  
5 element, the government is not required to show that force  
6 and violence were actually used against anyone if it proves  
7 beyond a reasonable doubt that the taking was the result  
8 of intimidation. That is, the result of placing another  
9 person in fear. The intimidation must be of a sort  
10 that is normally and reasonably calculated to arouse fear  
11 in the ordinary run of human beings and that is all.

12 So, if it happened that some extraordinarily  
13 timid person was put in fear by some sort of words or actions  
14 that would not normally frighten anyone, that would not  
15 be the type of intimidation with which the statute is  
16 concerned.

17 On the other hand, if the proof shows conduct  
18 by Mr. McAvoy or somebody whom he aided and abetted which  
19 would normally be expected to generate fear, then it is not  
20 necessary that those affected should actually have ex-  
21 perience, for example, some terror or panic or hysteria.  
22 The question in short in this respect is an objective one.  
23 That is, whether the government has sustained its burden  
24 of showing the conduct of the accused was of such a  
25 nature as to put an ordinary person into fear.



1 rkh24

2 In counts 2 and 4, Mr. McAvoy is charged with a  
3 violation of Section 2113D of Title 18, also an act of  
4 Congress, which makes it a separate and distinct crime  
5 to commit the offenses charged in counts 1 and 3 if  
6 in the commission of such offenses the person accused  
7 "assaults any person or puts in jeopardy the life of any  
8 person by the use of any person by the use of a dangerous  
9 weapon or device."

10 In order to find Mr. McAvoy guilty on count 2  
11 or 4, you must find that he committed the crime charged  
12 in count 1 or count 3, as the case may be. In addition  
13 you must find beyond a reasonable doubt that Mr. McAvoy  
14 in committing the crime in count 1 or 3 as the case may be,  
15 either assaulted one or more persons or by the use of  
16 a dangerous weapon, that is a firearm, puts in jeopardy  
17 the life or lives of one or more persons.

18 As I have indicated, these counts require  
19 a finding either one, that there was an assault or, two,  
20 that the lives of one or more persons were placed in  
21 jeopardy by the use of a dangerous weapon. It is not  
22 essential to find both an assault and an endangering of  
23 lives by the use of such weapons.

24 Now, the word "assault" is defined to include  
25 an unlawful attempt or threat to apply force or violence or



1           rkh  
2           to inflict bodily injury when the attempt or threat is  
3           coupled with the apparent ability to carry it out then and  
4           there; so that it arouses a fear in the intended threatened  
5           victim that he or she will be subject to immediate physical  
6           injury. An assault as it is defined in law may be  
7           committed without actually touching or striking or doing  
8           bodily harm to the person in question. Indeed, if I were  
9           to come up with you and shake my fist in your face in  
10          such a manner that you reasonably and objectively believed  
11          that I could and would hit you and strike you, that could be  
12          an assault and for example, to speak in terms of the problem  
13          we have at hand, the flourishing or pointing or showing  
14          of a pistol or gun at another person for the purpose of  
15          putting that other person in fear would be sufficient to  
16          constitute an assault.

17                 I also mentioned to you just now even if you  
18          find no assault in connection with counts 2 and 4, these  
19          counts may be established if you find beyond a reasonable  
20          doubt that the lives of one or more persons were put in  
21          jeopardy by Mr. McAvoy by the use of a dangerous weapon.  
22          To justify such a finding in this case, you must be  
23          convinced beyond a reasonable doubt that the defendant  
24          under question carried one or more firearms or that he  
25          aided and abetted a co-defendant to do so. It is not



1 essential to such a finding that there be direct evidence  
2 that shows the firearm was loaded in fact. If a person  
3 is engaged in a robbery and does place or points a gun  
4 to insure his demand and intends to produce a fear in  
5 a person or persons, the jury is permitted to infer that  
6 from these facts the gun was loaded and capable of inflicting  
7 the deadly injury threatened by the one who employed it.  
8

9 Ladies and gentlemen, with respect to each charge,  
10 you may have noted I have used the terms aiding and abetting.  
11 It is the law that it is not necessary for the government  
12 to prove the defendant on consideration, in this case Mr.  
13 McAvoy, personally did each of the acts charged. For  
14 example, it is unnecessary to show that he physically took  
15 the money from the bank or himself pointed the gun at  
16 someone in the bank. A federal law provides that whoever  
17 commits an offense against the United States or whoever aids,  
18 abets or induces or procures someone else to commit the act  
19 is guilty of committing the crime himself. While there is no  
20 precise rule as to what acts constitute aiding and abetting,  
21 the government must show beyond a reasonable doubt if it is  
22 to secure a conviction for aiding and abetting, that a  
23 defendant in some manner associated himself with the illegal  
24 venture, that he participated in it as something he wished  
25 to bring about and that he sought by his actions to make it



1  
2 succeed. One who aids and abets another in sum, in the  
3 commission of a crime, is equally guilty with the person  
4 who actually and physically committed it. Therefore, if  
5 you find beyond a reasonable doubt with respect to any count  
6 of the indictment either that Mr. McAvoy actually committed  
7 the crime charged or aided and abetted others in its  
8 commission, you may find him guilty on that offense.

9 As I have indicated to you earlier, before you  
10 could convict Mr. McAvoy on any charge, you must find  
11 beyond a reasonable doubt that what he did, he did knowingly  
12 and wilfully. An act is done knowingly if it is done  
13 voluntarily and purposely and not because of mistake,  
14 accident, negligence or any other innocent reason or  
15 without knowledge of what is being done. An act is done  
16 wilfully if it is done knowingly and deliberately and with  
17 an bad motive or purpose.

18 Ladies and gentlemen, it is important for me  
19 to point out to you that the government called Mr. Gilberto  
20 Schmidt and Christine Klein as witnesses in this trial.  
21 They are what are commonly called as accomplices. By their  
22 own testimony, they admitted they were accomplices in the  
23 crimes charged against Mr. McAvoy in counts 1 and 2 in the  
24 indictment. In the prosecution of crime, the government  
25 is frequently called upon to use witnesses who are



1 accomplices. Often it has no choice. They are the only  
2 people who can testify as to what occurred and the govern-  
3 ment must rely as any person proving a case must, upon  
4 witnesses to transactions such as they are. The fact that  
5 a witness is an accomplice may be considered by you as  
6 bearing upon his or her credibility. In fact it should  
7 be considered by you. However, it does not follow that  
8 because a person has acknowledged participation in the  
9 crime charged, he is not capable of giving a truthful  
10 version of what he testified to. His or her testimony,  
11 however, should be viewed with great caution and scrutinized  
12 carefully. You should ask yourself whether his testimony  
13 or her testimony was inspired by any motive of reward,  
14 of self-interest or hostility to the defendants so that he  
15 or she gave a false or colored testimony against Mr. McAvoy.  
16 If you find that such testimony was so colored, you  
17 ought unhesitatingly to reject it. However, if after a  
18 cautious and careful examination of the witness' testimony  
19 and his demeanor on the witness stand you are satisfied  
20 that he or she told the truth as to the events in question,  
21 there is no reason why you should not accept that testimony  
22 as credible and act upon it accordingly.  
23  
24

25 I have come to the end of my most formal instructions  
but a very important part of my instructions remains. That



1 is to discuss with you the part that you now are to play  
2 in the determination of this case. I know you will try  
3 the issues that have been presented to you in accordance  
4 with the solemn oath that you took, that you would well  
5 and truly try the issues joined in this case and reach  
6 a verdict based solely on the evidence put before you in  
7 this courtroom and the instructions which I am now giving  
8 you.  
9

10 I like that phrase, "well and truly try the issues  
11 joined in this case." It goes back a thousand years and  
12 its old-fashioned flavor reminds us all of the hundreds  
13 of thousands of juries who have performed this function  
14 before you. In order for you to reach a verdict, either  
15 of guilty or not guilty on any of the charges, your verdict  
16 must, of course, be unanimous. I ask you to take up each  
17 charge one at a time and to reach a verdict on that charge  
18 and go on to the next. You can choose the order you wish,  
19 but take up one at a time only.

20 Nothing that I have said in my instructions,  
21 whatever it may be, and I stress it, is intended to indicate  
22 any view of mine as to how the various issues put before  
23 you should be determined. If you find that the law has  
24 not been violated, you should not hesitate to acquit Mr.  
25 McAvoy. On the other hand, if you find that the law has



1       rkh  
2       been violated on any of the counts put before you, you  
3       should not and you may not hesitate because of sympathy  
4       or any other reason to render a verdict of guilty as  
5       to that particular count.

6               Ladies and gentlemen, it is customary for juror  
7       number 1 to act as the foreman or forelady as the case may  
8       be and I am asking Mrs. James to act as the forelady in  
9       this case.    You have the right at any time to get in touch  
10      with the court either to have exhibits brought in to you in  
11      the jury room so you could review them or if you wish, to  
12      have any of the testimony read back to you or if you have  
13      any questions you want to put to the court.   If you do wish  
14      that any exhibits be put before you or that any testimony  
15      be read to you, I request you to be as specific as possible  
16      in designating that material so we can send it in to you  
17      or get it ready to be read to you as quickly as possible.

18              Mrs. James, if you wish to get in touch with  
19      the court, all you need to do is write out a note specifying  
20      what it is you have in mind and give it to the marshal  
21      who will have you in custody and standing right outside  
22      the door.

23              Ladies and gentlemen, I have come to the end of  
24      my instructions.   I want to meet briefly with both counsel  
25      in the robing room to see if they think anything needs



clarification and we will be right back.

(In the robing room)

MR. PANZER: I have a few requests, your Honor. Your Honor did not, although I didn't mention it, go into the fact on the question of credibility and impeachment, evidence of prior criminal acts can be considered by the jury.

THE COURT: You are talking about the accomplices?

MR. PANZER: Yes.

THE COURT: I have said they could take into consideration the -- are you talking about acts other than--

MR. PANZER: Yes.

MR. EPSTEIN: Mr. Schmidt admitted to it. Christine Klein would be the only one relevant.

THE COURT: Yes.

MR. PANZER: Your Honor stated the elements and did make reference beyond a reasonable doubt but your Honor didn't do it with respect to as he mentioned each element. I don't want the jury to get the impression --

THE COURT: I don't think they could possibly have that impression but I will specify each element must be determined.

MR. PANZER: Your Honor went into the charge about aiding and abetting and I would like your Honor to



1  
2 tell the jury that mere knowledge of even presence at the  
3 scene of a crime is not sufficient for aiding and abetting.

4 THE COURT: All right.

5 MR. PANZER: There was something about the use  
6 of a deadly weapon during the commission of the bank robbery  
7 that just didn't sit right with me but unfortunately I can't  
8 think of anything to correct it so maybe I ought to leave  
9 it alone.

10 THE COURT: I did it with respect to the govern-  
11 ment's charge but I found nothing wrong with it.

12 MR. PANZER: There was no evidence the guns  
13 were operable. I am not sure. I don't know whether I am on  
14 safe grounds so I will not urge it.

15 MR. EPSTEIN: The law is the jury can infer  
16 the guns were operable and in the alternative, the assault  
17 portion of that statute does not even require it.

18 THE COURT: If it were the government's obligation  
19 positively to prove they were operable then unless we  
20 put a special verdict to the jury, assuming there was  
21 a conviction on 2 and 4 on the basis of assault and  
22 otherwise but I believe it is perfectly proper to let  
23 the question go to the jury and allow them to infer when  
24 a gun is used, it is operable unless there is evidence  
25 to the contrary and there is not.



Anything else?

MR. PANZER: No.

MR. EPSTEIN: I have nothing.

(In open court)

THE COURT: Ladies and gentlemen, just a few minor matters.

Christine Klein admitted that she had committed criminal acts in the past. That is something which you could take into consideration in determining her credibility. Like everything else, it is a fact which you must weigh in your own way. I am not suggesting that anybody who has committed criminal acts in the past cannot be telling the truth but it is relevant in determining whether or not and to what extent you wish to believe her testimony.

Second, I think I made it clear but in case I did not, I described to you the various elements of the crimes that the government had to prove in order for Mr. McAvoy to be found guilty on any charge. The government must not only prove each such element, it must prove each such element beyond a reasonable doubt.

Finally with regard to the question of aiding and abetting, I told you in order to find that Mr. McAvoy had aided and abetted anybody or to find that any defendant did, you had to find that he had a stake in the matter,



1  
2 that he acted in the matter in such a way as to indicate  
3 that he wished to make it succeed. It follows that a  
4 defendant's mere presence at the commission of a crime  
5 would not constitute aiding and abetting. You might come  
6 across a robbery on the street and you would be present  
7 at a crime but you would not be responsible for aiding  
8 and abetting.

9 With those clarifications, I believe we are  
10 ready to swear in the marshal who will take you into custody  
11 and allow you to commence your deliberations.

12 Before we do swear in the marshal, I am obliged  
13 Miss Battelle to excuse you as an alternate juror. I regret  
14 that you are not permitted under the law to participate  
15 in the deliberations since the entire jury is on hand.  
16 I thank you very much for your attentive presence and  
17 I hope you found the trial to be an interesting experience.

18 Would you be good enough to go into the jury room  
19 and take any possession you have there, if you have any.

20 Ladies and gentlemen, we were not able to arrange  
21 to have lunch brought in for you today. The marshals will  
22 take you out to have lunch. It goes without saying you  
23 are not to discuss the case with anybody else and please  
24 don't discuss the case at lunch. I don't think you will all  
25 be together and you should not deliberate in groups or



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cliques. You should only deliberate when you are all  
in the same room able to discuss it so everybody can hear what  
you are all saying.

(Marshal sworn)

THE COURT: Will you go with the marshal. Are  
they going directly to lunch?

You are going directly to lunch.

(Jury leaves room)

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1  
2 THE COURT: I ask if any requests for exhibits  
3 are made, you arrange to have the exhibits sent in to the  
4 jury on your own without my coming here and if any requests  
5 for testimony to be read, that you agree on that testimony  
6 before I am called and don't call me unless I need to be.  
7 If they ask for the testimony of so and so, I don't think  
8 there is any need for the court to be present. If there is  
9 some dispute between you as to what is requested or it is  
10 ambiguous, of course I will come down and ask the jury to  
11 come in.

12 It is my procedure to ask the clerk when she receives  
13 a note from the marshal to telephone me and read me the note  
14 over the phone and I will give her instructions as to  
15 what action I think should be taken or come down myself.

16  
17 (Luncheon recess)  
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## AFTERNOON SESSION

2 P.M.

(The jury commenced deliberations at 2 P.M.

(Recess.)

(2:20 P.M., a note was received from the jury.)

(In open court - jury present.)

THE CLERK: A note has been received from the jury and it will be marked Court's Exhibit 3 and it reads as follows: "The jury, your Honor, the jury requests pictures of both banks. Witness Mrs. Ward's statement and picture of Mr. Schmidt."

(Court's Exhibit 3 received.)

THE CLERK: The court reporter will read the testimony of Mrs. Ward.

(Testimony read)

(At 2:45 P.M., the jury continued its deliberation.)

(5:25 P.M. in open court - jury present.)

THE COURT: I called you in because the hour is growing late and you have been deliberating for a number of hours now and we have to make plans whether to stay or come back tomorrow.

I wonder madam foreman and I don't want an answer as to what the verdict is but can you tell me whether the jury has reached a verdict on any of the counts?



1                   rkh  
2                   THE FORELADY: We have not.

3                   THE COURT: Will you stay in the jury box, I would  
4 like to confer with counsel.

5                   (Side bar)

6                   (In robing room)

7                   THE COURT: It isn't that late at the moment but  
8 it is getting on. There are a number of women on the jury  
9 and I noticed by their addresses a number of them come from  
10 some distance. I would like to excuse them for the evening  
11 but I would like to hear what you gentlemen have to say  
12 before I reach a conclusion.

13                  MR. PANZER: I have no objection.

14                  MR. EPSTEIN: I have no objection.

15                  (In open court)

16                  THE COURT: Ladies and gentlemen, I have concluded  
17 you have had a fairly arduous day having listened to the  
18 summations of both counsel and my instructions to you and  
19 having deliberated all afternoon. I am going to excuse  
20 you at this time to return tomorrow morning and I will ask  
21 you to be here at 9:30 tomorrow morning. Is there anyone  
22 who can't make it by 9:30?

23                  Can you make it by 10?

24                  JUROR 2: 10 for sure or a quarter of 10.

25                  JUROR 6: 10 for sure.



1  
2 THE COURT: Be here promptly at 10 because you  
3 can't commence deliberations until all of you are here  
4 and please if some of you arrive and others don't, don't  
5 talk about the case until all of you get here because  
6 deliberations without all of you is no good.

7 Don't forget, doesn't discuss the case home tonight.  
8 Even at this late in the game, nobody should enter into  
9 deliberations with you other than your fellow jurors.

10 I will look forward to your being here tomorrow  
11 morning at 10 o'clock. You are excused.

12 (Jury leaves room)

13 THE COURT: Gentlemen, I will be in chambers  
14 long before 10 o'clock tomorrow morning but I will be  
15 there by 10 o'clock and I will be available to you if you  
16 need me.

17 (Adjourned to June 27, 1975, at 10 A.M.)  
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United States of America  
v.  
Arthur McAvoy  
Peter Quinn

June 27, 1975,  
10 A.M.

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(At 10 A.M. jury resumed its deliberations.)

(Recess)

(At 10:35 A.M., a note was received from the jury.)

THE COURT: Part of this note says can the signed statements of C. Klein and G. Schmidt be reviewed in the jury room?

The question would be decided on the basis of whether or not those statements are in evidence.

MR. EPSTEIN: They are not in evidence. We did not think they would be admissible. One was marked but was not offered.

THE COURT: We will mark the note Court Exhibit 5.  
(Court's Exhibit 5 marked.)

THE COURT: The note reads as follows: "May the jury please hear again the statements of the male teller from the People's Bank. Also Mark Taylor."

MR. EPSTEIN: The male teller is Donald Allan.

THE COURT: Bring the jury in.



(Jury presenc)

THE COURT: Good morning ladies and gentlemen. I am sorry I wasn't able to bring you in at the time you sent this note in but there were other proceedings being conducted here in court. We now have a clear field.

I will state for the record I have received your note which has been marked Court's Exhibit 5 in which you say may the jury please hear again the statements of the male teller from the People's Bank, also Mark Taylor.

I take it you want the testimony of those two people read and we have arranged to have it put aside and the reporter will read it to you as soon as I discuss the other request in your note. The other request is, can the signed statements of C. Klein and G. Schmidt be used in the jury room.

The answer to that is they can't because they were not put in evidence in this case. They were simply referred to in questioning the witnesses.

I will ask the reporter to read the testimony that has been requested.

(Testimony read)

THE COURT: Ladies and gentlemen, thank you. You will resume your deliberations. We are arranging to have sandwiches and food brought in for lunch so we will save that



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much time anyway.

(Jury leaves room)

(Recess)

(11:30 A.M., the jury announced it had reached a verdict.)

(Court's Exhibit 6 marked.)

(In open court.)

THE COURT: I want to be sure it is understood what the clerk's questions will mean. We will refer to counts 1, 2, 3, 4. Counts 1 and 2 will refer to the actual indictment. Whether it is superseded or not, I don't remember.

MR. EPSTEIN: Yes, there was.

THE COURT: Counts 3 and 4 referred to the clerk to the jury will actually refer to counts 5 and 6 of the true superseding indictment.

MR. EPSTEIN: That is correct.

THE COURT: Mr. Marshal, will you bring in the jury, please?

(Jury present)

THE COURT: Madam forelady, I have received your note which said you have reached a verdict.

I will ask the clerk to call the names of all members of the jury.



CERTIFICATE OF SERVICE

November 7, 1977

I certify that a copy of this ~~brief~~ and appendix has been mailed to the United States Attorney for the Southern District of New York.

Jonathan Hellerman